4431.

SUPREME COURT OF THE UNITED STATES.

No. 143.

LOUIS L. REFELD, A. B. K. THETFORD, AND TERRENCE FARRELLEY, EX'ORS MARY F. NOTREBE, WIDOW, AND EDWARD C. MORTON AND HIS WIFE, MARY F. MORTON, HEIRS OF FREDERIC NOTREBE, DEC'D, APP'TS,

vs.

WILLIAM W. WOODFOLK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARKANSAS.

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Gideon, Printer.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Proceedings had in the circuit court of the United States, for the eastern district of Arkansas, at the April term thereof, A. D. 1858, in chancery—present and holding said court the Hon. Daniel Ringo, one of the judges of said court—in the following entitled cause, to wit:

WILLIAM W. WOODFOLK, Complainant,
vs.
LEWIS L. REFELD, A. B. K. THETFORD, and TERENCE FARRELLEY, as executors of Frederic Notrebe, deceased, Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary his wife, sole heir of Frederic Notrebe, and Sanford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, Residuary Trustees of the Real Estate Bank of the State of Arkansas, Defendants.
} On Bill in Chancery.

Proceedings had on the 3d day of May, A. D. 1858.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the eastern district of Arkansas, greeting:

Whereas, lately, in the circuit court of the United States for the eastern district of Arkansas, before you, or some of you, in a cause between William W. Woodfolk, complainant, and Lewis L. Refeld, A. B. K. Thetford, and Terrence Farrelley, executors of Frederic Notrebe, deceased, and Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary F. his wife, heirs of said Frederic Notrebe, and others, defendants, in chancery, wherein a decree was rendered against the said defendants, as by the inspection of the transcript of the record of the said circuit court which was brought into the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-six, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel; and it appearing to the court, that the decree entered in this case is not a

final decree, it is therefore now here ordered, adjudged and decreed by this court, that this cause be and the same is hereby dismissed for the want of jurisdiction. Mar. 5th.

You, therefore, are hereby commanded that such further proceedings be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-six.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Filed 15th June, 1857.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

Order of Court.

And, by consent and agreement of parties, it is further ordered, adjudged, and decreed by the court, that this cause be re-instated on the docket of this court, to be proceeded with to a final determination; and that, to that end, this cause be referred to Richard Searcy, the deputy clerk of this court, as a special master in chancery, in the place and stead of William Field, esq., the clerk of this court, heretofore appointed such master, but has failed to report or act in the premises, to take and state the account herein, under and according to the basis specified in the decree rendered herein, as appears on page 398 and following, of the chancery record of this court, and that he proceed in every respect as therein stated, at some time and place to be named by him, after giving one notice thereof to said parties, or their solicitors, and report his acts and doings in the premises at the October adjourned term, 1858, of this court, until which time this cause is continued.

Proceedings had on the 5th day of October, A. D. 1858.

WILLIAM W. WOODFORD, Complainant, vs. LEWIS L. REFELD, A. B. K. THETFORD, and Terrence Farrelley, as executors of Frederic Notrebe, deceased, Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary his wife, sole heir of the said Frederic Notrebe, and Sanford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary trustees of the Real Estate Bank of the State of Arkansas, Defendants.	On Bill in Chancery.

This day comes the said complainant, by James B. Johnson, esq., his solicitor, and the said defendants, by Garland and Randolph, esq's, their solicitors, and Richard Searcy, esq., special master, heretofore appointed to take and state an account, as directed by the decree of this court, pronounced at the April term thereof, A. D. 1855, produced here in court his report as such master, which is ordered to be filed; and there being no exception by either party to said report, it is further ordered, that the same be, and it is hereby, in all things confirmed.

And it being referred to the court to fix and determine the sum to be paid to said master for his services in taking such account, the court, on hearing the parties and testimony adduced in relation thereto, on consideration thereof, is of opinion that one hundred dollars is reasonable, and doth therefore allow this sum to be paid to said Richard Searcy, esq., for all his services as such master, by the said complainant, but to be taxed as other legal costs of this suit; and thereupon doth adjudge, order, and decree, that said complainant do pay to the said Richard Searcy, esq., the said sum of one hundred dollars, and if not otherwise paid, that the same may be enforced by execution as upon a judgment at law.

And this cause coming on to be further heard upon the bills, answers, replications, exhibits, and depositions, mentioned in the decree herein pronounced at the April term, 1855, of this court, and the report of the special master now confirmed as part of the record in this case, and was argued by counsel, and submitted to the court; whereupon, on consideration of the premises, the court here doth order, adjudge, and decree, in manner and form as particularly set forth and described in and by the decree pronounced in this cause at the April term of this court, A. D. 1855, and that every order and direction in said decree be observed and enforced, subject only to this qualification, to wit: that the indemnity thereby provided, and directed to be given to said complainant, be made in manner and form as therein specified, for and to the full sum of sixty-one thousand five hundred dollars, the present amount of the principal and interest accrued secured by the said mortgage to the Real Estate Bank of the State of Arkansas, as ascertained by the said report of the said master, and that such indemnity, as particularly specified in said decree, be made in the manner therein and thereby directed, on or prior to the first day of the next term of this court.

And doth further adjudge, order and decree, that the said defendants, Edward C. Morton and Mary F. his wife, Mary Felicite Notrebe, and the said Louis L. Refeld, A. B. K. Thetford and Terence Farrelly, as executors of the last will and testament of the said Frederic Notrebe, deceased, do pay to the said complainant, William W. Woodfolk, all of his costs in and about this suit expended, to be taxed, and do also pay to their co-defendants, the

residuary trustees of the Real Estate Bank of the State of Arkansas, Henry L. Biscoe, Sanford C. Faulkner, James H. Walker, John Drennen, and Luther Chase, all of their costs in and about this suit expended, to be taxed, and that said parties go hence without day.

Whereupon the said defendants, by their solicitors, now here in open court, pray an appeal to the Supreme Court of the United States, from the decree in this cause, which appeal is granted, upon condition that said defendant, Edward C. Morton, execute and file here, with the clerk of this court, an appeal bond to the complainant, in the sum of fifteen thousand dollars, within sixty days from this date, with good and sufficient sureties, conditioned according to law, to be approved by this court, or a judge thereof, and said complainant, by his solicitor, here in court admits due and legal notice of said appeal, and the said parties respectively, by their solicitors, here in court agree, that in making up the transcript of the record in this case for the Supreme Court, it shall be sufficient to embrace only the whole of the proceedings subsequent to the April term, 1855, of this court, and which, with the transcript heretofore made and now on file in the office of the clerk of the said Supreme Court, will make a full and complete, transcript of the record and proceedings in this cause, in this court, and by consent and agreement of parties shall be used and taken as such on this appeal.

Proceedings before the special Master.—Notice.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the Circuit Court of the United States for the eastern district of Arkansas, 10th day of August, A. D. 1858.

WILLIAM W. WOODFOLD, Complainant,
vs.
LEWIS L. REFELD, A. B. K. THETFORD, and Terence Farrelly, as executors of Frederic Notrebe, deceased, Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary his wife, sole heir of the said Frederic Notrebe, and Sanford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary trustees of the Real Estate Bank of the State of Arkansas, Defendants.
} In Chancery.

To James B. Johnson, esq., attorney of record for the complainant, and to Messrs. Garland & Randolph, the attorneys of record for the defendants in the above entitled cause:

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Please take notice, that the undersigned, as special master in chancery appointed by the said circuit court at the April term thereof, A. D. 1858, to take and state an account in said cause, will proceed to take the testimony of witnesses therein, at the office of Gordon N. Peay, receiver of the Real Estate Bank of Arkansas, in the city of Little Rock, in Pulaski county, in said eastern district, on the 21st day of August, A. D. 1858, between the hours of 9 o'clock a. m. and 5 o'clock p. m. of said day, and to continue from day to day, at the place and between the hours aforesaid, until the taking of the same is completed, at which time and place you can attend and examine and cross-examine the witnesses, if you think proper.

R. SEARCY,
Special Master in Chancery.

Little Rock, Ark's, 10th August, A. D. 1858.

Exhibit "A" referred to in taking testimony in this case on 21st August, 1858.

R. SEARCY,
Special Master in Chancery.

I, James B. Johnson, acknowledge service of the above this 10th August, 1858.

JAMES B. JOHNSON.

I certify that I delivered a true and correct copy of the above and foregoing notice to William M. Randolph, esq., of the firm of Garland & Randolph, attorneys at law, on the 10th day of August, A. D. 1858, in Little Rock, in the eastern district of Arkansas.

11th Aug., 1858.

R. SEARCY,
Special Master in Chancery.

Evidence before the Master.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the Circuit Court of the United States, in and for the eastern district of Arkansas.

Testimony of witnesses taken and subscribed before Richard Searcy, special master in chancery, appointed by the honorable circuit court of the United States in and for the eastern district of Arkansas, at the April term thereof, A. D. 1858, in chancery sitting, to take and state an account, &c., &c., in the following cause therein pending, to wit:

WILLIAM W. WOODFOLK, Complainant, vs. LEWIS L. REFELD, A. B. K. THETFORD, and Terence Farrelly, as executors of Frederic Notrebe, deceased, Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary his wife, sole heir of the said Frederic Notrebe, and Sanford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase, and James H. Walker, residuary trustees of the Real Estate Bank of the State of Arkansas, Defendants.	On Bill in Chancery.

On Saturday, the 21st day of August, A. D. 1858, at the office of Gordon N. Peay, receiver of the Real Estate Bank of Arkansas, in the city of Little Rock, in said eastern district, the time and place mentioned in the notice hereto annexed, and marked "A," A. H. Garland, the attorney of record for the defendants, appeared, and James B. Johnson, esq., the attorney of record for said complainant, did not appear, and the taking of testimony in this cause was postponed and adjourned over until Monday morning, the 23d day of August, 1858, at 9 o'clock.

R. SEARCY,
Special Master in Chancery.

Monday morning, 23d August, 1858.

This day appeared the parties aforesaid, by their respective attorneys, and by the consent of said parties the taking of testimony in this cause is postponed and adjourned over until 9 o'clock Tuesday morning.

R. SEARCY,
Special Master in Chancery.

Tuesday morning, 24th August, 1858.

By consent of parties the taking of testimony in this cause is postponed and adjourned over until Friday morning, 9 o'clock.

R. SEARCY,
Special Master.

Friday morning, 27th August, 1858.

This day came said parties by their respective attorneys, and by consent the taking of the testimony was taken at the court-house of the circuit court of Pulaski county, instead of the office of G. N. Peay, receiver of the Real Estate Bank; and the taking of said testimony was then proceeded in, and is as follows:

Gordon N. Peay, a witness, being produced, was duly sworn to

testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the cause in the caption hereof mentioned and fully set forth, deposes and says:

I am receiver of the Real Estate Bank of the State of Arkansas, and have charge of all the books and papers belonging to said bank. On the files of the bank I find a mortgage executed by Frederic Notrebe and William Cummins, dated the 2d day of July, A. D. 1837, to said bank, acknowledged before D. L. Haller, a justice of the peace of Arkansas county, Ark's, on the 24th day of July, 1837, and subsequently, on the 17th day of May, 1839, acknowledged by the parties before Thomas W. Newton, notary public, and filed for record in the office of the clerk and recorder of Chicot county, on the 2d day of October, 1837, and recorded on the 23d day of October, 1837. Said mortgage embraces the following described lands, to wit: N. E. fr'l ¼ fr'l sec. 27, containing 38 $\frac{84}{100}$ acres; S. W. ¼ fr'l sec. 22; S. E. ¼ sec. 21; W. ½ sec. 21; N. W. ¼ sec. 28; E. ½ sec. 28, and S. W. fr'l ¼ fr'l sec. 23, containing 53 acres, all in township 19 S., R. 1 W. Whole tract making 1,211 $\frac{84}{100}$ acres.

This mortgage was given to secure 300 shares of stock in said Real Estate Bank, amounting to thirty thousand dollars principal, by them jointly subscribed, and for the payment of their bond to the bank for that sum, on the 26th day of October, 1861, with interest thereon at the rate of five per centum per annum from date of bond, payable half yearly in advance, and three hundred shares of said bank were awarded to said Notrebe and Cummins on the faith of said bond and stock mortgage. True copies of said bond and mortgage are embraced in Exhibit No. 1 in the answer of Terence Farrelly, and marked in said exhibit as Exhibits A and B. Which said bond is not yet due, and no part of the interest has been paid thereon. The interest amounts at this date to thirty-one thousand five hundred dollars.

GORDON N. PEAY.

Dr. John A. Jordan, a witness produced and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause in the caption hereof mentioned and set forth, deposes and says:

I was one of the commissioners appointed by the circuit court of Arkansas county, in chancery sitting, at the October term, A. D. 1851, thereof, in the matter of dower of Mary Felicite Notrebe, widow and relict of Frederic Notrebe, dec'd, in the estate of the said Frederic, dec'd, and as such commissioner, with B. L. Haller and Samuel Mitchel, set apart the dower of said Mary F., a true and correct report of which is embodied in a transcript from the records of said court hereto attached and marked Exhibit X, and made a part of my deposition.

After deducting the dower of said Mary F., as appears in said Exhibit X, the balance of said property was received by said Ed-

ward C. Morton, in right of his wife, Mary Cummins, an heir of said Frederic Notrebe.

I have a good knowledge of the value of most of the property belonging to the estate of Frederic Notrebe, deceased, and from the best of my knowledge, believe *that* the portion of said estate received by said Morton to be over and above one hundred thousand dollars.

JOHN A. JORDAN.

The above and foregoing testimony was taken by me, and sworn to and subscribed by Gordon N. Peay and John A. Jordan, respectively, in my presence, on the 27th day of August, A. D. 1858.

R. SEARCY,
Special Master in Chancery.

Exhibit X, referred to in Jordan's Testimony.

(Commissioners' Report.)

The undersigned, commissioners appointed by a decree of the hon. circuit court of Arkansas county, at the October term, A. D. 1851, in the matter of dower of Mary Felicita Notrebe, widow and relict of Frederick Notrebe, dec., in the estate of said Frederick, dec., report to the hon. court, that in pursuance of the duties enjoined on them by said decree, your commissioners went to the plantation and late residence of dec'd, in Arkansas county, and there made a demand in writing of the executors of dec'd to produce the slaves and personal property of the estate of said Frederick, dec'd. Whereupon, the executors produced the slaves hereinafter named, as the whole (except some for which a suit is pending in the supreme court of Arkansas,) and there, upon personal view of said slaves, and the examination of Francis Mitchell, (the overseer of said plantation, who your commissioners caused to come before them) in regard to the capacity and qualities of said slaves, proceeded to appraise and value the same, the whole value and your commissioners' appraisement being sixty-one thousand and eight hundred dollars; and it appearing to them from said view and appraisement, that said slaves were susceptible of an equitable division in specie between the parties, according to their respective rights, proceeded to allot, and have set apart to the complainant, for her one-third, the following slaves, at their appraised value, viz: Henry, aged 48 years, value six hundred dollars; Sally, his wife, aged 46 years, value four hundred and fifty dollars; Black William, aged 38 years, value six hundred dollars;

Little Mary Ann	age	19	years	value	$700 00
Big Mary Ann	"	25	"	"	800 00
Juli Ann	"	25	"	"	700 00
Parmella	"	12	"	"	500 00

The foregoing slaves, in accordance with said decree, your commissioners have delivered to said complainant as her household and body servants.

Henrietta	aged 13 years	valued	$700 00
Sidney	" 10 "	"	500 00
Diamond	" 8 "	"	450 00

All children of Henry and Sally.

Dennis	aged 34 years	valued at	$800 00
Milly	" 5 "	"	300 00
Francis	" 4 "	"	250 00
Georgiana	" 2 "	"	200 00
Lidana	" 7 months	"	100 00

All children of Dennis and Mary Ann.

Gibson	age 5 years	"	250 00
John	" 1 "	"	100 00

Children of Salema.

Louisa	" 18 "	"	750 00
Black Joe	" 31 "	"	1,000 00
Little John	" 21 "	"	900 00
Little Tom	" 18 "	"	800 00
Alexander	" 37 "	"	800 00
Rachel	" 17 "	"	650 00
Little Daniel	" 33 "	"	800 00
Theresa	" 22 "	"	700 00
Andy	" 4 "	"	250 00
Frank	" 11½ "	"	150 00
Big Old Judy	" 48 "	"	150 00
Jack	" 38 "	"	700 00
Little Mary	" 45 "	"	450 00
Solomon	" 14 "	"	700 00
Olivia	" 23 "	"	900 00
Phillis	" 16 "	"	650 00
Henry Pleasant	" 23 "	"	800 00
Leonard	" 19 "	"	700 00
and Peggy (child)	" 9 mo's	"	100 00

The whole in number thirty-seven slaves, and their appraised value twenty thousand six hundred and fifty dollars.

And to the executors of the last will and testament of said Frederick Notrebe, deceased, the following slaves, being the residue, to wit:

Isaac	aged 43 years	valued at	$700 00
Jim Bayon	" 35 "	"	850 00
Moses	" 32 "	"	750 00

Joe, a mulatto....	aged	23	years	valued at	$850 00
Little Sam.....	"	19	"	"	800 00
Davy.....	"	19	"	"	800 00
Carter	"	43	"	"	600 00
Henry Stillwell...	"	37	"	"	400 00
Daphney.....	"	44	"	"	400 00
Richard	"	11	"	"	600 00
Alice.....	"	27	"	"	500 00
Martha.....	"	32	"	"	650 00
President	"	9	"	"	400 00
Bill	"	13	"	"	50 00
Gabriel (B. Smith)	"	25	"	"	1,000 00
Mariah	"	27	"	"	800 00
Jim Bay	"	29	"	"	700 00
Delia	"	11	"	"	500 00
Ellen	"	8	"	"	450 00
Henry Magness..	"	5	"	"	400 00
Shadrick	"	3	"	"	200 00
Dennis and Martha (old).....				"	100 00
Edward	aged	27	years	"	750 00
Vinah	"	22	"	"	800 00
Thomas	"	3	"	"	200 00
Nail	"	3	mos.	"	100 00
Milly	"	51	"	"	100 00
Lucinda.....	"	18	"	"	750 00
Jim Rey.....	"	23	years	"	800 00
William.....	"	16	"	"	600 00
Eli.....	"	11	"	"	500 00
Susan.....	"	4	mos.	"	100 00
Polly	"	50	years	"	200 00
Hirville	"	13	"	"	600 00
Aleline	"	15	"	"	700 00
Guilford.....	"	4	mos.	"	100 00
Henrietta	"	37	years	"	500 00
Matilda	"	16	"	"	700 00
George	"	60	"	"	200 00
Viola.....	"	34	"	"	500 00
Mary.....	"	11	"	"	600 00
Spencer.....	"	7	"	"	400 00
Hannah.....	"	5	"	"	300 00
Lewis.....	"	40	"	"	700 00
Big Daniel.....	"	38	"	"	600 00
Sidney	"	28	"	"	600 00
Robert	"	6	"	"	400 00
Patsey	"	4½	"	"	300 00
Mirey.....	"	2½	"	"	200 00
Joshua	"	1	"	"	100 00

Big Emily.....	aged	47	years	.....	valued at	$400	00
Elizabeth.....	"	16	"	.....	"	600	00
Margaret	"	18	"	.....	"	500	00
Little Crasy.....	"	9	"	.....	"	400	00
George	"	7	"	.....	"	500	00
Martha	"	16	"	.....	"	600	00
Minerva.....	"	14	"	.....	"	600	00
Victor	"	12	"	.....	"	500	00
Wm. Franklin...	"	10	"	.....	"	450	00
Pedro.....	"	8	"	.....	"	400	00
Pleasant.....	"	40	"	.....	"	600	00
Big Mary.....	"	45	"	.....	"	500	00
Priest	"	25	"	.....	"	700	00
Jacob.....	"	21	"	.....	"	900	00
Sally	"	18	"	.....	"	700	00
Rebecca	"	16	"	.....	"	700	00
Eliza Jane.....	"	14	"	.....	"	700	00
Charley	"	11	"	.....	"	600	00
Angeline.....	"	28	"	.....	"	700	00
Igneas.....	"	25	"	.....	"	800	00
Perlina.....	"	11	"	.....	"	500	00
Amy.....	"	47	"	.....	"	200	00
Old Fanny.....	"	57	"	.....	"	200	00
Old Sam.....	"	52	"	.....	"	250	00
Victory.....	"	57	"	.....	"	200	00
Billy.....	"	43	"	.....	"	400	00
Phillis.....	"	47	"	.....	"	250	00
Big John.....	"	31	"	.....	"	750	00
Eliza.....	"	35	"	.....	"	500	00
Rosetta.....	"	9	"	.....	"	500	00
Old Prissilla	"	54	"	.....	"	250	00
Little Judith.....	"	34	"	.....	"	500	00

The whole of the residue, in number eighty-two slaves, and their appraised value forty-one thousand one hundred and fifty dollars.

Your commissioners further report that, at the said time and place as aforesaid, they proceeded to allot and have set apart to the complainant for her one-third the following mules and horses, viz: Queen, aged 7 years, value 85 dollars; New Hampshire, aged 7 years, value 85 dollars; Jenny Ribbon, aged 15 y'rs, value 60 dollars; Flyce, aged 12 years, value 70 dollars; Simon, aged 9 years, value 80 dollars; Little Rock, aged 10 years, value 75 dollars; Drum, aged 9 years, value 50 dollars; black mare, aged 10 y'rs, value 70 dollars; Sam, 14 years old, valued 45 dollars; eight in number, and the appraised value six hundred and twenty dollars.

And to the executors of the last will and testament of said Frederick, dec'd, the following mules and horses, to wit:

Sam	aged	10	years	valued	$40	00
Hot Spring	"	10	"	"	75	00
Susan	"	9	"	"	80	00
Mule Patsey	"	11	"	"	65	00
Pet Grey	"	3	"	"	80	00
Jim Crow	"	7	"	"	80	00
Chase	"	7	"	"	65	00
Pompey	"	5	"	"	75	00
Boston	"	6	"	"	70	00
Colt	"	7	months	"	30	00
Ado	"	7	years	"	90	00
Rolly Hughes	"	11	"	"	70	00
Summerville	"	20	"	"	20	00
Elizabeth	"	18	"	"	45	00
Hunt	"	14	"	"	40	00
Big John	"	14	"	"	65	00
Mary Grade	"	20	"	"	25	00
Bob	"	10	"	"	60	00
Wiston	"	8	"	"	75	00
Russ	"	8	"	"	90	00

The whole in number twenty, and their appraised value one thousand two hundred and forty dollars.

And at the same time and place as aforesaid, your commissioners proceeded to allot and have set apart to the said complainant for her one-third the following oxen, at their appraised valuation, to wit:

Toney and Black,	value	40	dollars.
Black and Bob,	"	45	"
Berry and Brown,	"	35	"

The whole in number six, and their appraised value one hundred and fifty dollars. And to the executors of the last will and testament of said Frederick, deceased, the following oxen, being the residue, to wit: Judge and Buck, value thirty dollars; Lagrue and Hickory, value forty-five dollars; Charley and York, value forty-five dollars; Brandy and Charley, value twenty dollars; Dick and Bright, value forty dollars; three head at the upper place, value sixty dollars; the whole in number thirteen, and their appraised value two hundred and forty dollars.

And your commissioners further report, that at the same time and place aforesaid, they valued and appraised the silver plate of said Frederic, deceased, to the worth of seventy-five dollars, and the household and kitchen furniture to the worth three hundred dollars, the whole value of said silver plate and kitchen furniture

together being three hundred and seventy-five dollars; all of which your commissioners deemed, in justice, the said complainant to be entitled to, and so allotted and set apart. And your commissioners further report that, at the time and place aforesaid, they caused a survey of the land in cultivation on the plantation of said Frederic, deceased, to be made by a competent surveyor, and the following described tract or parcel of land, as marked and designated *and* plat made by said surveyor, and hereunto accompanying, and prayed to be taken as part of this report, assigned to said complainant, value, quantity, and quality being considered, for her and them, to wit: All that parcel or tract of land fronting on the Arkansas river, above the lane, containing one hundred and nine acres, including the domicile of said Frederic, deceased, and another parcel below the lane aforesaid, fronting on said river, and extending from said lane down said river ninety poles to a stake, planted as a boundary point by your commissioners; and thence back on a line running parallel with the lane aforesaid, containing one hundred and eleven acres; said line being designated on said plats of survey by a dotted line, the whole number of acres two hundred and twenty.

And to the executors of the last will and testament of said Frederic, dec'd, the residue of said plantation, value, quantity, and quality being considered, containing two hundred and sixty-four acres.

And your commissioners also allotted and set apart to said complainant for wood and timber land that tract or parcel of land in the point on the Arkansas river, below said plantation, south of the levee, and to the executors, &c., all that tract or parcel of land, &c., wood and timber land, north of said levee *said levee*, forming a dividing line between the wood and timber lands of said complainant and executors, &c.

Your commissioners further report, that upon examination of the cotton gin, mill, and negro cabins, on the plantation of the said Frederic, deceased, they did not consider them susceptible of a division, but appraised and valued them as follows: Cotton gin, value one thousand dollars; mill three hundred dollars; negro cabins twelve hundred dollars.

Your commissioners report at a proper equitable and favorable time for the division of the property as set forth and respectfully allotted in this report of your commissioners between said complainant and said executors, the first day of January, A. D. 1853; and having performed the duties enjoined upon them according to the decree of your honorable court, your petitioners pray to be discharged, &c.

JOHN A. JORDAN,
B. L. HALLER,
SAMUEL MITCHELL.

STATE OF ARKANSAS,
County of Arkansas.

I, J. G. Quertenuous, clerk of the circuit court within and for the said county, hereby certify that the foregoing twenty-six pages contain a full, true and complete copy of the inventory of the property belonging to the estate of F. Notrebe, dec'd; also copies of the first two settlements of said estate, made by the executors; also a copy of the commissioners' report allotting dower to the widow of said Notrebe.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office, this 7th day of June, A. D. 1858.

[L. S.]

J. G. QUERTENUOUS, *Cl'k.*

This is Exhibit X, referred to and made a part of my deposition.

JOHN A. JORDAN.
R. SEARCY,
Special Master.

In the Circuit Court of the United States for the eastern district of Arkansas.

Before the Special Master in Chancery.—In Vacation.

To the honorable the Judges of the Circuit Court of the United States for the eastern district of Arkansas—In Chancery:

I, Richard Searcy, special master in chancery, appointed by this honorable court at the April term, A. D. 1858, to take and state an account in a certain cause pending in said court, on the chancery side thereof, wherein William W. Woodfolk is complainant, and Lewis L. Refeld, A. B. K. Thetford and Terrence Farrelly, as executors of Frederic Notrebe, deceased, Mary Felicite Notrebe, widow, and Edward C. Morton, and Mary his wife, sole heir of the said Frederic Notrebe, and Sanford C. Faulkner, John Drennen, Henry L. Biscoe, Luther Chase and James H. Walker, residuary trustees of the Real Estate Bank of the State of Arkansas, are defendants, would most respectfully report, that I find from the testimony of Gordon N. Peay, a witness sworn to testify in this behalf, and whose evidence was taken down in writing by me and signed by said Peay, and herewith returned, that the following described lands, which are fully described and set forth and embraced in Exhibit No. 1, in the answer of Terence Farrelly, now on file among the original papers and here referred to, and marked in said exhibit as Exhibits A and B, being true copies of the original mortgage and bond executed by Frederic Notrebe and William Cummins to said Real Estate Bank, on the 2d day of July, A. D. 1837, the said mortgage and bond being given to secure 300 shares of stock in said bank, to wit: The northeast fractional quarter of fractional section twenty-seven, containing $38\frac{84}{100}$ acres; the south-

west quarter of fractional section twenty-two; southeast quarter of section twenty-one; west half of section twenty-one; northwest quarter of section twenty-eight; east half of section twenty-eight, and southwest fractional quarter of fractional section twenty-three, containing 53 acres—all in township nineteen south, in range one west—the whole containing $1,211\frac{84}{100}$ acres, being the same land in controversy in this suit; and that said bond was given by said Frederic Notrebe and William Cummins to said Real Estate Bank, for the sum of thirty thousand dollars principal, payable to said bank, on the 26th day of October, A. D. 1861, with interest thereon at the rate of five per cent. per annum from the 2d day of July, A. D. 1837, the date of said bond, until paid, payable half yearly in advance; and that three hundred shares of stock in said bank were awarded to said Notrebe and Cummins on the faith of said bond and stock mortgage, and that said bond is not yet due, and no part of the interest has been paid thereon.

And I further find from the evidence of said Peay, that the interest now due on said bond amounts to the sum of thirty-one thousand five hundred dollars; making an aggregate of principal and interest now due to said bank of sixty-one thousand five hundred dollars.

I do find from the evidence of John A. Jordan, a witness sworn to testify in this behalf, and whose evidence was by me taken down in writing and herewith returned, referred to and made a part of this report, that he, said Jordan, together with B. L. Haller and Samuel Mitchell, were appointed commissioners by the circuit court of Arkansas county, in chancery, at the October term thereof, 1851, to assign dower to Mary Felicite Notrebe, widow of the said Frederic Notrebe, deceased, and as such commissioners, did set apart the dower of said Mary Felicite, a true and correct report of which is embodied in a transcript from the records of said circuit court of Aakansas county, and attached to the deposition of said Jordan, and therein referred to, marked Exhibit X, and made a part of his deposition, and which is also by me referred to and made part of this my report, by which I find that the said Mary Felicite has received from the estate of the said Frederic Notrebe, deceased, the following personal property and negro slaves, to wit:

37 negro slaves	valued at	$20,650 00
8 horses and mules	"	620 00
6 oxen	"	150 00
Silver plate		75 00
Household and kitchen furniture		300 00

I also find by reference to said Exhibit X, that the said Mary F. has received as her dower in real estate, two hundred and twenty acres of land; for a particular description of said land, reference is here had to said Exhibit X.

I also find from the evidence of said Jordan, and by reference to Exhibit X, which is made a part of my report, that Edward C. Morton, in right of his wife, Mary, sole heir of said Frederic Notrebe, deceased, has received from the estate of the said Frederic, deceased, the following personal property and negro slaves, to wit:

82 slaves	valued at	$41,150	00
20 horses and mules	"	1,240	00
13 oxen	"	240	00

I do also find, that said Morton, in right of his said wife, has received in real estate two hundred and sixty-four acres of land, reference being here had to said Exhibit X.

I also find that the said Mary Felicite, and the said Edward C., in right of his wife, have received other lands for wood and timber land, the quantity and value of which are not known to me.

I also find, by reference to said Exhibit X, that the gin valued at one thousand dollars, and negro cabins valued at twelve hundred dollars, and the mill valued at three hundred dollars, were not divided between the said Mary Felicite and Edward C. in right of his wife, but that they are entitled to receive the same.

I also find that the total value of all the personal property and slaves received by the said Mary Felicite, widow, from the estate of the said Frederic Notrebe, deceased, amounts to the sum of twenty-one thousand seven hundred and ninety-five dollars; and that I have no means of ascertaining the value of the land set apart to and received by her.

I also find that the aggregate amount of the personal property and slaves received by the said Edward C. Morton, in right of his said wife, Mary, from the estate of the said Frederic Notrebe, deceased, is forty-two thousand six hundred and thirty dollars; and that I have no means of ascertaining the value of the land received by him.

I also find that the aggregate amount of the personal property and slaves received by the said Mary Felicite Notrebe and the said Edward C. Morton, in right of his said wife, Mary, from the estate of the said Frederic Notrebe, deceased, is sixty-four thousand and twenty-five dollars.

I also find that the aggregate amount of the personal property not distributed, and which the said Mary Felicite Notrebe and the said Edward C. Morton, in right of his said wife, Mary, are entitled to receive from said estate is two thousand five hundred dollars.

I also find that the aggregate amount of the personal property and slaves received, and of the personal property not distributed, and which the said Mary Felicite Notrebe and the said Edward C. Morton, in right of his said wife, Mary, are entitled to receive

from the estate of the said Frederic Notrebe, deceased, is sixty-six thousand nine hundred and twenty-five dollars.

I also find further, from the evidence of John A. Jordan, that the amount of the property received by the said Edward C. Morton, in right of his said wife, Mary, from the estate of the said Frederic Notrebe, deceased, is over and above one hundred thousand dollars.

All which is respectfully submitted.

R. SEARCY,
Special Master in Chancery.

Little Rock, Ark's, 27th August, 1858.

Recapitulation.

Amount of debt for which the lands are mortgaged...	$30,000 00
Interest on debt	31,500 00
Total principal and interest	$61,500 00
Amounts received by Mary F. Notrebe—	
37 slaves.....	$20,650 00
8 horses and mules.....	620 00
6 oxen	150 00
Silver plate.....	75 00
Household and kitchen furniture.....	300 00
Total.....	$21,795 00
Amounts received by Edward C. Morton in right of his wife, Mary—	
82 slaves	$41,150 00
20 horses and mules	1,240 00
13 oxen.....	240 00
Total.....	$42,630 00
Amounts to be distributed—	
Gin.....	$1,000 00
Negro cabins.....	1,200 00
Mill.....	300 00
Total.....	$2,500 00
Total amount of assets.....	$66,925 00
Excess of assets, as particularly ascertained by me....	5,425 00

R. SEARCY,
Special Master in Chancery.

Filed 27th August, 1858.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

Supreme Court of the United States.

WILLIAM W. WOODFOLK, Complainant,
vs.
LOUIS L. REFELD, A. B. K. THETFORD, and Terrence Farrelly, as executors of the last will and testament of Frederic Notrebe, Mary Felicite Notrebe, Edward C. Morton, Mary F. Morton and others, Defendants. } Appeal.

Know all men by these presents, that we, Edward C. Morton, as principal, and R. H. Douglass and B. W. Lee, as sureties, are held and firmly bound unto the above named William W. Woodfolk in the sum of fifteen thousand dollars, lawful money of the United States; to the payment whereof, well and truly to be made to the said William W. Woodfolk, his executors, administrators, or assigns, we bind ourselves, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed, sealed, and dated this the first day of November, A. D. 1858.

The condition of the above obligation is such, that whereas the said Louis L. Refeld, A. B. K. Thetford, and Terrence Farrelly, as executors as aforesaid, and said Mary F. Notrebe, Edward C. Morton, and Mary F. Morton, have taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the eastern district of Arkansas: Now, therefore, if the said apellants shall prosecute their said appeal with effect, and answer all damages and costs if they fail to make good their said appeal, then this obligation shall be null and void; otherwise shall be and remain in full force and virtue.

EDW'D C. MORTON, [SEAL.]
ROB'T H. DOUGLASS, [SEAL.]
B. W. LEE. [SEAL.]

Signed and sealed in the presence of—
WM. C. WEEKS,
E. DOUGLASS,
R. M. MORGAN,
W. B. POOL.

To DANIEL RINGO, *Judge.*

I am satisfied that the above securities are good and sufficient.

Yours, truly,
J. B. JOHNSON, *Att'y for Pl'ff.*

444.

I hereby approve as sufficient the foregoing bond, and the sureties named therein. Witness my hand, as United States judge for the eastern district of Arkansas, this 12th day of November, A. D. 1858.

DANIEL RINGO, *Judge.*

Filed 16th November, 1858.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

I, William Field, clerk of the circuit court of the United States for the eastern district of Arkansas, do hereby certify, that the above and foregoing pages contain a full, true, and perfect transcript of the mandate of the Supreme Court of the United States, the record entries, final decree, and the master's report, together with the notice, evidence, and accompanying papers, as the same now remain of record in my office in the above entitled cause.

In testimony whereof, I have hereunto set my hand as such clerk and affixed the seal of said circuit court at my office in the city of Little Rock, this 18th day of November, A. D. 1858.

[SEAL.]

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

Filed 29th November, 1858.